

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----X  
NATIONAL CASUALTY COMPANY,

Plaintiff,

CIVIL ACTION No. 04-10167-MLW

v.

FIRST STATE INSURANCE GROUP,

Defendant.

-----X

**DECLARATION OF LLOYD A. GURA**

I, Lloyd A. Gura, declare:

1. I am a member of the law firm of Mound Cotton Wollan & Greengrass, attorneys for Defendant First State Insurance Group ("First State"), and the principal attorney representing First State in the arbitration with National Casualty Company ("National Casualty"). As such, I am fully familiar with the facts and circumstances of this action. I respectfully submit this declaration in opposition to Plaintiff National Casualty's Supplemental Memorandum in Support of its Petition to Vacate Arbitration Award Under §§ 9 U.S.C. 10(a)(1) and 10(a)(3) and the January 13, 2005 Affidavit of Mark C. Kareken (the "Kareken Affidavit").

2. National Casualty seeks the yacatur of the March 12, 2004 final award (the "Award") rendered in the arbitration proceeding because First State allegedly violated an interim panel order directing it to produce certain First State documents not subject to disclosure by reason of the attorney-client privilege and the attorney work-product doctrine (the "Privileged Documents"). According to National Casualty, First State's withholding of the 757 Privileged Documents resulted in prejudice to National Casualty, despite First State's production of thousands of pages of documents from its files. Annexed hereto as Exhibit 1 is a true and correct

copy of a September 23, 2003 letter from Mark C. Kareken to Todd A. Bakal, acknowledging on behalf of National Casualty the receipt of "some 11,000 pages of material." National Casualty selected these documents from more than 100,000 pages of material that it reviewed while auditing First State's files during pre-hearing discovery. (First State's Brief in Opposition to National Casualty's Request for Privileged Documents, Amended Petition Ex. 7, at 18.)

3. Notably, at the hearing, it became clear that during prior, non-arbitration audits of First State, National Casualty had reviewed most, if not all, of the Privileged Documents. Annexed hereto as Exhibit 2 is a true and correct copy of relevant excerpts of the transcript of the arbitration hearing conducted from February 10, 2004 to February 12, 2004 (the "Hearing Tr."). Specifically, Hannah Huryk, Manager for Assumed Reinsurance at Nationwide Indemnity Company and one of the National Casualty claims handlers, testified that during a previous audit of First State, she reviewed the Privileged Documents, which she described as a "table full of material." (Hearing Tr., at 1039:3-1039:22)

4. Among the Privileged Documents reviewed by Ms. Huryk were memoranda prepared by the law firm of Hogan & Hartson, counsel to First State in connection with the underlying claims, for which First State is seeking reinsurance from National Casualty. (Hearing Tr., at 1089:6-1089:24, 1091:1-1091:24.) Ms. Huryk's notes of these memoranda indisputably support First State's position that it had settled the Owens Corning Fiberglass claim discussed in the Kareken Affidavit, as a single occurrence. (Hearing Tr., at 1089:14-1090:11.)

5. Ms. Huryk's notes also demonstrate that First State settled other claims on a single occurrence basis, and not on a multiple occurrence basis as argued by National Casualty. (E.g., Hearing Tr., at 1056:12-1056:21, 1093:24-1094:16.)

6. After considering the evidence presented by the parties and hearing the arguments of counsel, the panel rendered the Award, which was in favor of First State. The negative inference that the panel drew from First State's withholding of the Privileged Documents resulted in a denial of costs to First State. In this proceeding, National Casualty has not articulated how the Privileged Documents, which it previously reviewed, would have helped it to prevail at the hearing. Having seen the Privileged Documents earlier and been given the opportunity to take notes on their contents, it was incumbent on National Casualty to point out to the panel and this Court any documents that support its position. This was not done because no such documents exist. The Court should not substitute its judgment for that of the panel regarding the proper application of the negative inference given the inherent weakness in National Casualty's case.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 27, 2005.



Lloyd A. Gura

## **EXHIBIT 1**

**national casualty**  
company



MARK C. KAREKEN, ESQ.  
Senior Claims Counsel  
Direct Dial: 715/843-8739  
Facsimile: 715/843-8798  
E-mail: [karekem@nationwide.com](mailto:karekem@nationwide.com)

September 23, 2003

**VIA FACSIMILE AND REGULAR MAIL**

Todd A. Bakal, Esq.  
MOUND, COTTON, WOLLAN & GREENGRASS  
One Battery Park Plaza  
New York, NY 10004-1486

*Re: In the Matter of the Arbitration between First State and National Casualty Company*

Dear Mr. Bakal:

I have September 22, 2003 letter that you electronically transmitted yesterday afternoon. We cannot agree with your suggestion that depositions can be completed by October 3, 2003 or that the final hearing can take place as originally scheduled.

We acknowledge receipt of some 11,000 pages of material from your office last week. As you are aware, however, First State has still not produced the log of documents it has withheld from production. It is our understanding that First State has withheld materials from both the items National Casualty requested be copied – as a result of its on-site reviews – and those maintained in ECLIPS. First State has yet to advise National Casualty when First State will make its log of withheld materials available to National Casualty. Even after the log is produced to National Casualty, it must be reviewed and any disagreements submitted to the Panel for resolution. Without the log, we have no idea how involved a process that will be or how long it will take to resolve. Moreover, taking depositions before document discovery is completed creates the distinct possibility that such depositions will be incomplete. It makes no sense to pursue a course of action that contains an obvious and inherent flaw, i.e., that deponents will have to be recalled to answer questions about previously withheld materials.

As you are aware, the Panel instructed First State on July 14<sup>th</sup> to produce the ECLIPS materials as quickly as possible. Having suggested to the Panel that nothing substantive existed in ECLIPS, it took First State nine and a half weeks First State has produced almost 11,000 pages of materials. Putting aside peoples' schedules and other commitments, it is unreasonable to expect that National Casualty can digest this volume of material and complete depositions on both sides by October 3<sup>rd</sup>. This conclusion does not even consider the problem presented by the absence of First State's log of withheld materials and the time to resolve any issues it creates.

Todd A. Bakal, Esq.  
First State v. National Casualty Arbitration  
September 23, 2003  
Page 2

As you'll recall (see your 8/7/03 letter to me), National Casualty's person most knowledgeable deposition notice required at least ten days advance notice of the deposition. Counting today, there is only one day, October 3<sup>rd</sup>, which meets the ten-day requirement contained in both parties' deposition notices. We see no reason to abandon a requirement that was included in the notices specifically for the purpose of providing adequate time for preparation.

First State has now designated William Wigmanich as the person most knowledgeable to speak for First State with respect to all topics identified in National Casualty's deposition notice. National Casualty, however, also requested the depositions of every individual First State intends to call as a hearing witness. Are we to conclude that Mr. Wigmanich is both the person most knowledgeable and the only individual First State intends to call to testify at the final hearing? Your October 3<sup>rd</sup> cut-off proposal also fails to consider that National Casualty may wish to depose persons that the produced documents reveal as having had significant involvement relative to the issues in dispute.

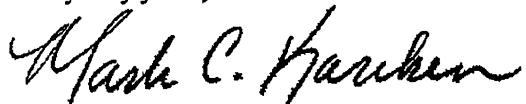
First State's September 12<sup>th</sup> deposition notices request the depositions of two former Nationwide employees, Messrs. Bare and Cahill. As I mentioned in my September 17<sup>th</sup> letter to Mr. Cass, we must first obtain these individuals' consent to appear for depositions – presumably in Columbus – and if not, then First State will have to decide whether it wishes to request subpoenas from the Panel to compel Messrs. Bare and Cahill to appear and then attempt to serve and enforce the subpoenas. All of this will take considerably more time than you have allowed for in your proposed schedule.

Lastly, your proposed schedule fails to consider the schedules and commitments of National Casualty's likely witnesses and counsel. I am not in a position to drop everything else to complete depositions by October 3<sup>rd</sup> or briefing by October 31<sup>st</sup>. The original schedule provided no less than two months from the completion of discovery to the submission of reply briefs. It is unfair and unrealistic of First State to produce 11,000 pages last week, leave completely unaddressed and unresolved the withheld document issues, and expect a deposition process – originally allotted two months for completion be completed in less than two weeks - and a briefing process - originally allotted two months for completion – to be concluded in one month.

We encourage First State to reconsider its scheduling proposal and agree with National Casualty that a November hearing may have appeared possible in January, but is no longer a viable option. We request that First State join National Casualty's request for the Panel to provide dates after November 2003 when they are available to conduct the final hearing. Assuming First State rejects National Casualty's suggestions, we request that the Panel act by granting National Casualty's September 22, 2003 request that the final hearing in this matter be moved to a mutually acceptable date after November 2003.

Todd A. Bakal, Esq.  
First State v. National Casualty Arbitration  
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Page 3

Very truly yours,



Mark C. Kareken  
First State v. National Casualty OCF Arbitration 9/22/03 Letter to Bakal.doc

Cc: R. Michael Cass (via fax)  
Dennis Gentry (via fax)  
Paul N. Steinlage (via fax)  
Susan E. Grondine, Esq. (via fax)

## **EXHIBIT 2**

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1 \*\*\*\*\*  
2 IN THE MATTER OF THE ARBITRATION BETWEEN  
3 FIRST STATE INSURANCE GROUP,  
4 Petitioner  
5 and  
6 NATIONAL CASUALTY COMPANY,  
7 Respondent  
8 \*\*\*\*\*  
9 VOLUME: III  
10 PAGES: 694-1140

11

12 BEFORE PANEL MEMBERS:  
13 R. Michael Cass, Chairman  
14 Paul N. Steinlage  
15 Dennis C. Gentry  
16  
17 Date: Thursday, February 12, 2004  
18 Held at: Wyndham Hotel  
19 89 Broad Street  
20 Boston, Massachusetts  
21 Commence: 8:30 a.m.  
22  
23 Reporter: Judith McGovern Williams,  
24 CSR, RPR, CRR  
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(617) 338-0030 (800) 655-3663

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1 APPEARANCES (Continued):  
2  
3 For the Respondent:  
4 MARK C. KAREKEN, ESQ.  
5 Claims Counsel  
6 Nationwide Indemnity  
7 400 Westwood Drive  
8 P.O. Box 8101  
9 Wausau, Wisconsin 54402-8101  
10 karekem@nationwide.com  
11 715-843-8739  
12  
13 ALSO PRESENT (during some or all of Day 3  
14 hearing):  
15  
16 Michael Al-Hussainy  
17 William Wigmanich  
18 Frank Lagana  
19 Daniel K. Myhrer  
20 Hannah R. Huryk  
21 Frederick C. Schaefer  
22 David Robb  
23  
24 G & M COURT REPORTERS & ASSOCIATES  
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695

1 APPEARANCES:  
2  
3 For the Petitioner:  
4 MOUND, COTTON, WOLLAN & GREENGRASS  
5 Lloyd A. Gura, Esq.  
6 Todd A. Bakal, Esq. and  
7 Kristen Mackford, Legal Assistant  
8 One Battery Park Plaza  
9 New York, New York 10004  
10 lgura@moundcotton.com  
11 tbakal@moundcotton.com  
12 212-804-4200  
13 and  
14 SUSAN E. GRONDINE, ESQ.  
15 Horizon Management Group, LLC  
16 150 Federal Street  
17 Boston, Massachusetts 02110  
18 sgrondine@horizonmgt.com  
19 617-526-7720  
20  
21  
22  
23  
24

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1 I N D E X

2 Witness Page  
3 Frederick C. Schaefer  
4 Redirect Examination by Mr. Kareken 699  
5 Recross Examination by Ms. Gura 703  
6  
7 Daniel Kevin Myhrer  
8 Direct Examintion by Mr. Kareken 717  
9 Cross Examination by Mr. Gura 755  
10 Further Recoss by Mr. Gura 963  
11  
12 Hannah Huryk  
13 Direct Examination by Mr. Kareken 966  
14 Cross Examination by Mr. Gura 1037  
15  
16  
17  
18 E X H I B I T S

19 Number Page

20 FS  
21 103 One-page Pulmosan Outstanding 889  
22 Issues for Carrier Meeting  
23 February 10/11/2000, production  
24 number FS 01578  
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1038

1 A. Sure.  
 2 Q. -- at First State/Hartford. You have  
 3 audited both at Boston and Hartford?  
 4 Correct?  
 5 A. Yes.  
 6 Q. And the first time you audited, was that  
 7 in 2001? You can look at our chart. I am  
 8 not trying to trick you. It is right  
 9 there.  
 10 (Handing FS Exhibit No. 99 to  
 11 the witness.)  
 12 Q. I think from your testimony you said 2001?  
 13 A. That says the first time. I thought I had  
 14 been there earlier than that. I thought I  
 15 had been there in 2000, but.  
 16 Q. That is fine. It doesn't matter, 2000,  
 17 2001.  
 18 A. I audited with the team often and fairly  
 19 regularly since my employment with the  
 20 company.  
 21 Q. And you have heard Mr. Wigmanich explain  
 22 and describe First State's procedures  
 23 concerning audits and the access to and  
 24 production of privileged documents; isn't  
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1 that right?  
 2 A. Yes.  
 3 Q. And I think he described it as initially  
 4 access was given and privileged documents  
 5 were not produced in writing or that  
 6 photocopies were not made and produced to  
 7 reinsurers? Do you recall that?  
 8 A. I do recall that he said that.  
 9 Q. Okay. In 2001, is it your testimony that  
 10 you expected to receive copies of  
 11 privileged documents?  
 12 A. Yes. That was my expectation.  
 13 Q. That is the October-November audit?  
 14 Correct?  
 15 A. Yes.  
 16 Q. Obviously, you would have looked at those  
 17 privileged documents during that audit?  
 18 That is why you had that expectation?  
 19 Correct?  
 20 A. I did look at them. Yes.  
 21 Q. Okay.  
 22 A. I had a table full of material. Yes.  
 23 Q. And there was some discussion, and you saw  
 24 us all fighting, and you are familiar with  
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1 the Fred Schaefer/Bill Wigmanich report?  
 2 A. You mean the letter?  
 3 Q. Yes. The letter.  
 4 A. Yes.  
 5 Q. What is the date of that letter?  
 6 A. The date of the letter is April 2001.  
 7 Q. And this letter, that you know is an  
 8 exhibit here, it is First State 101, the  
 9 letter from Jackie Rackle to Fred  
 10 Schaefer --  
 11 A. That's correct.  
 12 (Handing FS Exhibit No. 101 to  
 13 the witness.)  
 14 Q. -- you have seen that?  
 15 A. Yes.  
 16 Q. This is now a letter written in response  
 17 to that 2001 audit in November -- October  
 18 and November, and she says quite clearly,  
 19 "As you are aware, it is our policy to  
 20 remove all privileged and confidential  
 21 documents" from the materials we sent to  
 22 you; correct?  
 23 A. That's correct. That's what that says.  
 24 Q. Did you ever write a letter to First State  
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1 expressing your shock and amazement at the  
 2 change in the policy that they are no  
 3 longer giving you copies of the privileged  
 4 and confidential documents?  
 5 A. I believe that in my denial letter on  
 6 Owens Corning I do express my shock and  
 7 amazement at having 500 pages of documents  
 8 withheld.  
 9 Q. That's in --  
 10 A. In relation to the single claim?  
 11 Q. Right.  
 12 A. Yes.  
 13 Q. Let's go to that. That was your January  
 14 -- no, no, no. I am sorry. That was your  
 15 January 9, 2002 letter?  
 16 A. That is the January 9th. It was signed by  
 17 Mr. Cohen, and I testified that --  
 18 Q. Yes. That you basically drafted it?  
 19 A. Yes.  
 20 Q. And you are from Wausau, and he signed his  
 21 name?  
 22 A. Yes.  
 23 CHAIRMAN CASS: What?  
 24 ARBITRATOR STEINLAGE: What  
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1 Q. And turn to item number 6 of the  
 2 agreement.  
 3 (Witness complying.)  
 4 Q. It says, "By entering into this agreement,  
 5 neither Wausau nor OCF have made, nor  
 6 shall they be deemed to have made, any  
 7 admission of any kind concerning insurance  
 8 coverage or any other matter. No payment  
 9 made under this agreement is, nor shall it  
 10 be deemed to be, any admission or evidence  
 11 of the existence of any coverage, the  
 12 amount of any coverage, or the  
 13 non-existence of any coverage under any of  
 14 the policies. No payment made under this  
 15 agreement is, nor shall it be deemed to  
 16 be, any admission or evidence of the  
 17 position of any party as to any matter,  
 18 including, without limiting the generality  
 19 of the foregoing, the issues of what  
 20 constitutes bodily injury, property damage  
 21 or an occurrence under any of the policies  
 22 or any other insurance policy."

23 Do you see that?

24 A. Yes.

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10

1 settlement between an insured and an  
 2 insurer?  
 3 A. I don't think it is typical for every  
 4 settlement, not a simple aggregate  
 5 payment. But in issues where things are  
 6 disputed, I think it is not atypical.  
 7 Q. Okay. Now do you know if Wausau was  
 8 excess of 25 million, just like in the  
 9 First State layer?  
 10 A. I have no direct knowledge of Wausau's  
 11 coverage at all.  
 12 Q. Okay. We will get to that. It's in your  
 13 notes.  
 14 Ms. Huryk, are you disputing  
 15 that Aetna took the position with First  
 16 State -- excuse me -- with NERCO that  
 17 they, that Aetna, was ceding it to NERCO  
 18 as a single separate occurrence?  
 19 A. No. I think that it was ceded to NERCO as  
 20 a single separate occurrence.  
 21 Q. All right.  
 22 A. I think NERCO disputed that --  
 23 Q. I don't --  
 24 A. -- and asked for information related to  
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1055

1 Q. Is that typical language in a settlement  
 2 agreement for a case like this?  
 3 A. Well, I don't know if it is typical in a  
 4 case like this, particularly in light of  
 5 it being a product liability claim. For  
 6 the most part, I think it seems obvious  
 7 that there was only \$240,000 paid for  
 8 nonproducts claims. If this was strictly  
 9 a product liability claim, I'm not sure  
 10 that there would be language like this in  
 11 it at all.  
 12 Q. You are guessing right now? You have no  
 13 idea?  
 14 A. Yes.  
 15 Q. I don't want you to guess. That is why I  
 16 ask you, please --  
 17 A. I don't handle direct side claims on  
 18 behalf of Wausau, Wausau International  
 19 underwriters, which is this.  
 20 Q. All I am asking is with respect to  
 21 settlement agreements, you have seen that  
 22 language is standard? No agreement to  
 23 anything? You are just settling? That is  
 24 pretty standard language between, in a

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1 that.  
 2 Q. Okay. And with respect to the IIC cession  
 3 to NERCO, are you disputing that that was  
 4 ceded to NERCO -- I'm not asking how NERCO  
 5 handled it. I understand that is a  
 6 subject we will get into.  
 7 A. A subject of the dispute.  
 8 Q. Right. I want to know IIC's position was  
 9 it was ceding the claim to NERCO as a  
 10 single separate occurrence?  
 11 A. Yes.  
 12 Q. Okay.  
 13 A. They were ceding it on that basis.  
 14 Q. I am trying to see if we can agree to some  
 15 broad things --  
 16 A. Okay.  
 17 Q. -- so I can cross out the swath of my  
 18 cross examination.  
 19 A. Okay.  
 20 Q. If we could turn to Exhibit No. 97.  
 21 (Witness complying.)  
 22 Q. If you can turn to 4676. Do you see the  
 23 number on the top right corner?  
 24 A. Yes.

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1 Is that what you are saying?  
 2

3 MR. GURA: Actually, I can show  
 4 that every document withheld is matched up  
 in her notes.

5 MR. KAREKEN: I am sorry. The  
 6 argument being made here is they don't  
 7 have the right to deprive us of making the  
 8 case with the documents they withheld.  
 9 They now want to say they shouldn't be  
 10 penalized from withholding the documents  
 11 from you and us because we saw them  
 12 supposedly once upon a time. This has  
 13 nothing to do with the merits of why we  
 14 didn't pay, which is why Hannah Huryk is  
 15 testifying.

16 MR. GURA: Then why does she  
 17 testify about that, that she didn't get  
 18 documents --

19 MR. KAREKEN: If you want to  
 20 argue about --

21 CHAIRMAN CASS: Okay.

22 ARBITRATOR GENTRY: Let's go off  
 23 the record for a minute.

24 CHAIRMAN CASS: Sure.

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10

1 occurrence, 20 percent multiple occurrence  
 2 limits; single occurrence 80 percent, one  
 3 additional limit." Do you see that?

4 A. Yes.

5 Q. Going a little further, if you look at  
 6 page 00957.

7 (Witness complying.)

8 Q. There is a document that actually may  
 9 start on the page before dated 12-11-00.

10 A. Yes.

11 Q. It says settlement values provided to the  
 12 ADR person?

13 A. Yes.

14 Q. And this is by different valuations by the  
 15 claim handler, by Hartford in-house  
 16 counsel, by Pat Hofer at Hogan & Hartson,  
 17 and Bill Bowman at Hogan & Hartson. Do  
 18 you see that at the top of 957?

19 A. I think that is what I wrote.

20 Q. That is all I am asking. And then under  
 21 A, it says "1 same occurrence," and it  
 22 gives some percentages. Do you see that?  
 23 "35, 30, 40, 30"?

24 A. It does.

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1 (Discussion off the record.)  
 2 (Recess taken at 5:45 p.m.)  
 3 (Recess ended at 6:02 p.m.)

4 BY MR. GURA:

5 Q. Ms. Huryk, we are on page 955.

6 A. Yes.

7 Q. There in your typed notes from your audit,  
 8 1/21/2000. Do you see that?

9 A. Yes.

10 Q. Further down, it says "Decision tree  
 11 analysis." Do you see that?

12 A. Yes.

13 Q. And it says "Predate analysis policy  
 14 subject to one occurrence (under  
 15 Wellington), W 90 percent, L 10 percent."

16 Do you see that?

17 A. Yes.

18 Q. Going further down it says "OL" -- I think  
 19 you meant OC -- "will not argue"?

20 A. Yes. That must -- probably is supposed to  
 be OC.

21 Q. "OC will not argue multiple occurrence or  
 22 else they don't reach the excess  
 23 coverage." Further down, "multiple

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1 Q. And then further down, it says, "Postdate,  
 2 A, separate single, no," and then it gives  
 3 some other percentages, "70, 60, 50 and  
 4 55"? Do you see that?

5 A. I do see that.

6 Q. If you turn to 958, 4/26/01 is a Hogan &  
 7 Hartson exhaustion analysis. Do you see  
 8 that?

9 A. I do.

10 Q. "Which policies attach and/or consumed and  
 11 when analysis is based on," four different  
 12 things. Do you see that?

13 A. I do.

14 Q. Those are your notes of that document?  
 15 Correct?

16 A. Those are notes of the document. Yes.

17 Q. And the next document, you are taking  
 18 notes on, is a 4-26-01 Hogan & Hartson  
 19 memo on number of occurrences. Do you see  
 20 that?

21 A. I do.

22 Q. It says, "At no time no one ever argued  
 23 multiple occurrence." Do you see that?

24 A. I do.

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10

1 MR. KAREKEN: It says "no one  
2 ever."

3 MR. GURA: I think that is what  
4 I said.

5 MR. KAREKEN: You said no time.

6 THE WITNESS: "No one ever  
7 argued." It is there.

8 MR. KAREKEN: I am sorry. I  
9 must be looking in the wrong spot.

10 MR. GURA: On the line before it  
11 says, "At no time no one ever."

12 MR. KAREKEN: Okay.

13 BY MR. GURA:

14 Q. It says, "If First State were right and  
15 all asbestos claims arose out of the same  
16 occurrence, then they'd owe zero; if First  
17 State argued multiple occurrence, OC got  
18 no coverage." Do you see that?

19 A. Yes.

20 Q. The next line, "If OC were right, single  
21 separate occurrence, then all limits are  
22 exposed plus defense in addition to  
23 limits." Do you see that?

24 A. I do.

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1 Q. That's your name?

2 A. Yes.

3 Q. Can you tell me where this document came  
4 from?

5 A. Yes. This is a document that was produced  
6 to us in an Odyssey arbitration.

7 Q. Who was the arbitration between? Odyssey  
8 and who?

9 A. Wausau and --

10 Q. Odyssey and Wausau?

11 A. Yes.

12 Q. You were testifying on behalf of Wausau in  
13 that arbitration?

14 A. Yes.

15 Q. Was that arbitration subject to a  
16 confidentiality order do you know?

17 A. Yes. It was.

18 Q. Okay. So the document which was produced  
19 in that arbitration which was subject to a  
20 confidentiality order and which was never  
21 produced to us in this case which for the  
22 first time appeared in your brief, is that  
23 a violation of the confidentiality order  
24 in that case?

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11

1 Q. Next line, another undated Hogan & Hartson  
2 memo analyzing, "Analysis of the extent to  
3 which OC would prevail in demonstrating  
4 nonproducts ID." Do you see that?

5 A. Yes.

6 Q. That Hogan & Hartson memo before that,  
7 4/26/01, is that the one that was included  
8 in your brief at Exhibit 142 do you know?

9 A. I don't know.

10 Q. Do you have Exhibit 142? I think you have  
11 Exhibit 142 there in that binder in front  
12 of you. It is the Wigmanich binder that I  
13 think it is in.

14 (Witness complying.)

15 Q. Do you see that document, ma'am?

16 A. I do.

17 Q. Also a memo from file from Mr. Bowman at  
18 Hogan & Hartson on number of occurrences.  
19 Do you see that?

20 A. I do.

21 Q. Same date; same date. Is there an exhibit  
22 stamp on the bottom of that document? Do  
23 you see that?

24 A. Yes.

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1 A. Well, this document was probably produced  
2 to us in the course of an audit as well,  
3 but it was also produced to us as part of  
4 that arbitration.

5 Q. Are you guessing now?

6 A. I don't -- you know, I don't know.

7 Q. You don't know. Okay. That's fine.  
8 Okay. We are done with that exhibit.

9 (Handing documents to Panel,  
10 witness, and counsel.)

11 MR. GURA: This is First State  
12 107.

13 (Handwritten notes, production  
14 number 00823 through 00835  
15 marked FS Exhibit No. 107.)

16 BY MR. GURA:

17 Q. First State 107, Ms. Huryk, is some more  
18 notes of yours. Is that right?

19 A. Yes.

20 Q. And I think Mr. Kareken showed you certain  
21 points in our brief where we quoted your  
22 notes. Do you recall that?

23 A. Yes.

24 Q. Okay. If you look under here on the first  
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1 page, I think it is the first one, it  
 2 says, "Aetna states that, as a matter of  
 3 law, the courts have determined that the  
 4 manufacture, sale and delivery of asbestos  
 5 constitutes a single occurrence." Do you  
 6 see that?

7 A. That's correct.

8 Q. You are familiar with certain courts  
 9 holding that way? Is that correct?

10 A. Certain courts hold that way. Other  
 11 courts hold other ways.

12 Q. Exactly my point. Thank you.

13 And this, all of these notes,  
 14 concern documents that you looked at  
 15 during audits; correct?

16 A. Yes.

17 Q. Okay.

18 A. And, you know, I would like to say a  
 19 little something about notes. One, these  
 20 aren't verbatim of the documents that I  
 21 have seen. There might be --

22 Q. You can do that on redirect. I didn't ask  
 23 you anything. I think the Panel can  
 24 determine, they have seen some of these

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10

1 Wigmanich.

2 MR. KAREKEN: It is not going to  
 3 be in that. It is not going to be in  
 4 that. No. That stays up here. It should  
 5 be in there.

6 (Handing FS Exhibit No. 65 to  
 7 the witness.)

8 A. I have it.

9 Q. Okay. And that's -- you testified on your  
 10 direct about you had discussions with  
 11 Mr. Dowd concerning the North River-Owens  
 12 Corning settlement? Do you recall that?

13 A. I do.

14 Q. And the first paragraph says, "After  
 15 reviewing the material provided, I asked  
 16 if I could discuss the loss with an  
 17 individual who handled the evaluation and  
 18 settlement negotiations. NERCO produced  
 19 Tom Dowd, VP. He was the individual who  
 20 was primarily responsible for managing the  
 21 claim." Do you see that?

22 A. I do.

23 Q. If you turn to the next page, it says  
 24 after the first full paragraph, "After

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1 documents, whether they are verbatim or  
 2 not. These are your notes of the  
 3 documents. That is all I am trying to  
 4 establish, ma'am.

5 CHAIRMAN CASS: He gets to ask  
 6 the questions.

7 THE WITNESS: That is fair  
 8 enough.

9 Q. If you could turn to Exhibit 65.

10 (Witness complying.)

11 Q. Ms. Huryk, to some extent I have  
 12 handwritten notes, but Exhibit 65 is some  
 13 of your typewritten notes out of those  
 14 handwritten notes; is that right?

15 ARBITRATOR GENTRY: This is  
 16 National Casualty or First State?

17 MR. GURA: First State 65.

18 MR. KAREKEN: I don't know if  
 19 she has that.

20 THE WITNESS: Yes. This goes  
 21 from 45 to 67.

22 CHAIRMAN CASS: It is not in the  
 23 Wigmanich?

24 MR. GURA: No, it is not in the  
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1 reviewing the file, I asked for the  
 2 opportunity to speak with the claims  
 3 adjuster to determine how the claim was  
 4 finally resolved, and I asked for the  
 5 arbitration file."

6 Do you see that?

7 A. Yes.

8 Q. "We had the following questions," and you  
 9 had five questions. Do you see that?

10 A. Yes.

11 Q. Not one of those questions concerns the  
 12 number of occurrences, single, separate or  
 13 multiple? Correct?

14 A. That's correct.

15 Q. Okay. If you go down to the second to  
 16 last paragraph, I think it is the third  
 17 sentence in, it says, "Ultimately, NERCO"  
 18 -- and this is your notes of your  
 19 discussions with Mr. Dowd; correct?

20 A. Yes.

21 Q. Okay?

22 A. Where are you?

23 Q. "Ultimately."

24 A. Where are you?

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1 MR. KAREKEN: I guess it depends  
 2 on your perspective of what exciting is.  
 3

4 MR. GURA: I have no idea what  
 5 they say. You expressed an interest.  
 6

7 ARBITRATOR GENTRY: I expressed  
 8 an interest they be given to the Panel.  
 9

10 MR. GURA: Then we will make  
 11 photocopies and provide them to the Panel.  
 12

13 CHAIRMAN CASS: Are you finished  
 14 with your cross?  
 15

16 MR. GURA: Yes.  
 17

18 CHAIRMAN CASS: Do you know now  
 19 whether you plan to do any redirect?  
 20

21 MR. KAREKEN: I do know now I  
 22 will be doing no redirect.  
 23

24 CHAIRMAN CASS: Except for Panel  
 25 questions, Ms. Huryk, you are finished.  
 So we will start at nine tomorrow morning  
 with Panel questions --

26 MR. KAREKEN: Okay.  
 27

28 CHAIRMAN CASS: -- for  
 29 Ms. Huryk.  
 30

31 MR. GURA: Can we start at 9:30?  
 32

33 THE WITNESS: 9:30?  
 34

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CERTIFICATE

I, Judith McGovern Williams, do  
 hereby certify that the foregoing record  
 is a true and accurate transcription of my  
 stenographic notes taken in the  
 within-entitled cause on February 12,  
 2004, to the best of my knowledge, skill  
 and ability.

Judith McGovern Williams  
 Registered Professional Reporter

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1 CHAIRMAN CASS: Then we will  
 2 move into the closing argument.  
 3

4 MR. GURA: Can we start at 9:30?  
 5

6 THE WITNESS: I thought you were  
 7 going to start earlier.  
 8

9 CHAIRMAN CASS: If you promise  
 10 you won't go more than an hour.  
 11

12 MR. GURA: Then we will start at  
 13 nine. I specifically think we will, I  
 14 will go more than an hour, so nine o'clock  
 15 is fine.  
 16

17 CHAIRMAN CASS: So the hearing  
 18 is continued until nine tomorrow morning.  
 19

20 (Handing documents to the Panel  
 21 and counsel.)  
 22

23 MR. GURA: Why don't we just  
 24 mark this on the record as First State  
 109.

25 (Group of Reinsurance Reports,  
 26 first report dated  
 27 September 16, 1998 marked  
 28 FS Exhibit No. 109.)  
 29

30 (Whereupon, at 7:04 p.m., the  
 31 arbitration was adjourned.)  
 32

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